

PROJECT SOUTH:
INSTITUTE FOR THE ELIMINATION OF POVERTY & GENOCIDE
9 GAMMON AVENUE • ATLANTA, GEORGIA 30315
404.622.0602 OFFICE

May 1, 2018

SENT VIA EMAIL: ICE-FOIA@dhs.gov

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Re: Request for Records pertaining to Yulio Castro-Garrido DOB 10/27/1984

Dear Freedom of Information Officer,

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. §522 (“FOIA”). The Request is submitted by Project South, a 501(c)(3) organization based in Atlanta, on behalf of the Castro-Garrido family. In this request, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, photographs, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

On January 30, 2018, Yulio Castro-Garrido died while in the custody of U.S. Immigration and Customs Enforcement (ICE).¹ ICE issued a press release regarding Mr. Castro’s death on January 31, 2018. According to the release, “Mr. Castro entered ICE custody on Nov. 24, following his transfer from the D. Ray James Federal Correctional Institute in Folkston, Ga.”² The press release indicated that Mr. Castro was diagnosed with pneumonia by ICE Health Service Corps (ISHC) medical personnel at the Stewart Detention Center (“SDC”), a contract facility operated by the corporation CoreCivic (formerly the Corrections Corporation of America) in Lumpkin, Ga where Mr. Castro was being housed by ICE. It should also be noted that the press release originally stated that “Mr. Castro initially resisted medical treatment which caused his condition to worsen.”³ ICE subsequently revised the release, dropping the assertion

¹ Mr. Castro’s next of kin has signed an affidavit as well as certified that she has retained Azadeh Shahshahani on behalf of Project South as well as G. Brian Spears as counsel and has thus authorized us to receive all any and all pertinent documents. Both documents signed by Ms. Rina Hernandez are enclosed.

² Press Release, Immigration & Customs Enforcement, ICE Detainee Passes Away, Jan. 31, 2018 (amended), <https://www.ice.gov/news/releases/ice-detainee-passes-away>

³ Press Release, Immigration & Customs Enforcement, ICE detainee passes away, Jan. 31, 2018 (original) <https://web.archive.org/web/20180201055738/https://www.ice.gov/news/releases/ice-detainee-passes-away>



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that Mr. Castro resisted treatment and instead stating that Mr. Castro “didn’t respond well to medically administered treatments, which caused his condition to worsen.”⁴

Staff members at Project South have received reports from other immigrants detained at SDC and their visitors alleging serious deficiencies in conditions at the facility, including: inadequate medical care, lack of access to interpreters in the medical department, improper use of confinement in segregation, insufficient education and recreation programs, and exorbitant prices for commissary items that constitute basic, hygienic necessities. Such accounts have been corroborated by an investigation undertaken by the Office of Inspector General (OIG) in the U.S. Department of Homeland Security (DHS).⁵

I. Records Requested

Project South requests **all records** relating to ICE’s standards of operation at SDC, including its **standards for medical care** as well as ICE’s records of contracts and communications regarding the provision of medical care for the immigrants detained at SDC.

Project South also requests all records in ICE’s possession relating to the conditions at SDC including records of confinement in segregation, daily schedules of personnel and inmates from November 2017 until February 2018, maintenance and cleaning records for inmate housing, any complaints or correspondences to or from ICE personnel regarding conditions at SDC, and any reports or recommendations made regarding the quality or conditions of inmate life at SDC.

Project South additionally requests **all records in ICE’s possession pertaining to Mr. Castro**, including but not limited to the following records:

- All records pertaining to the circumstances leading to Mr. Castro’s death, including but not limited to any and all medical and mental health records, reports, notes, forms, complaints, incident reports, supplementary reports, witness statements, daily activity logs, incident detail reports, and video and audio recordings.
- All records pertaining to Mr. Castro’s detention, including detainee location logs, kites, grievances, responses to kites and grievances, and medical and mental health screenings and assessments.

⁴ Jeremy Redmon, *Brother: Cuban was healthy before dying of pneumonia in ICE custody*, ATLANTA J.-CONST. (Feb. 20, 2018), <https://politics.myajc.com/news/state--regional-govt--politics/brother-cuban-was-healthy-before-dying-pneumonia-ice-custody/9TNpiI95CYQPyiGPoSyzmJ/>

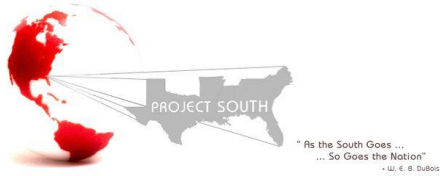
⁵ U.S. Dep’t of Homeland Security Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> (finding “long waits for the provision of medical care, including instances of detainees with painful conditions,” unhygienic conditions, lack of sanitary supplies, and “an inconsistent and insufficiently documented grievance resolution process” at Facility, as well as “language barriers [that] prevented detainees from understanding medical staff” generally).



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- All of the above records relating to Mr. Castro's incarceration at the D. Ray James contract facility, to the extent that such records have been made available to ICE.
- All records pertaining to any investigations of the circumstances surrounding Mr. Castro's arrest, detention, and/or death that are being conducted by the ICE Office of Professional Responsibility, ICE Office of Detention Oversight, or any other U.S. Department of Homeland Security entity or other government entity.
- All records and communications between ICE and the healthcare facilities at which Mr. Castro was treated, including: the Southwest Regional Medical Center (SWRMC) in Cuthbert, Ga.; Phoebe Putney Memorial Hospital in Albany, GA; and the Mayo Clinic in Jacksonville, FL. This request includes a request for all internal communications involving ICE Health Service Corps (ISHC) medical personnel, as well as any and all other records with other external healthcare providers for the purpose of acquiring treatment for Mr. Castro.
- All documents or copies thereof that may have accompanied Mr. Castro when he was transferred from one facility to another, including without limitation:
 - (a) Any Form I-216 and/or appropriate copies of Form I-77, Baggage Check (or IGSA equivalent);
 - (b) Any Form USM-553 or local Medical Transfer Summary form;
 - (c) Any Form I-213, Record a/Deportable Alien Form;
 - (d) Any original or photocopy of Form I-203/203A, Order to Detain/Release Alien;
 - (e) Any Detainee Transfer Checklist;
 - (f) Any age verification documents (if applicable);
 - (g) Any copy or printout of all previous Post Order Custody Reviews (POCRs) and travel document requests in a property envelope fastened to the file;
 - (h) Any classification sheet;
 - (i) Any charging documents/records of proceedings;
 - (j) Any certified copies of convictions;
 - (k) Any fingerprint cards;
 - (l) Any photographs; and
 - (m) Any printouts from the Central Index System (CIS), ENFORCE and the FBI NCIC database.

For any assertion of withholding, Project South requests that each withheld document be particularly identified along with the basis for the withholding so that Project South has sufficient information to understand the reasoning for the withholding. Furthermore, in case of an appeal, the U.S. Department of Justice Office of Information Policy can use this information to determine whether the particular withholding is justified. There is a statutory duty to produce



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“[a]ny reasonably segregable portion of a record . . . after deletion of the portions which are exempt.” See 5 U.S.C. § 552(b). Withholding entire documents because they contain some exempt material violates this statutory duty. *See Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977) (“The focus of the FOIA is information, not documents, and an agency cannot justify withholding an entire document simply by showing that it contains some exempt material.”).

II. Request for Expedited Processing

Project South requests Track 1 expedited treatment for this FOIA request pursuant to 6 C.F.R. § 5.5(d) and 5 U.S.C. § 552(a)(6)(E).⁶

According to the FOIA statute, requests that demonstrate “a compelling need” or “in other cases determined by the agency” qualify for expedited processing.⁷ “Compelling need,” as defined by the statute, means “(I) that a failure to obtain requested records on an expedited basis . . . could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.”⁸

In this case, there is a compelling need for the information requested because (1) the failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual and (2) the information is requested by an organization primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

In addition to the compelling need for information, expedited processing is necessary in this case to provide Mr. Castro’s wife and family with truthful information regarding the circumstances of Mr. Castro’s death.

A. Failure to Obtain Requested Records on an Expedited Basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual

Recent reports have highlighted conditions that have led to the deaths of at least 179 detained immigrants since 2003, including 12 in fiscal year 2017. These reports include the aforementioned DHS OIG report detailing its concerns regarding treatment and care of immigrants detained by ICE,⁹ a May 2017 report “examin[ing] serious lapses in health care that have led to severe suffering and at times the preventable or premature death of individuals held

⁶ See also 6 C.F.R. § 5.5(e)(1).

⁷ 5 U.S.C. § 552(a)(6)(E)(i)(I)

⁸ 5 U.S.C. § 552(a)(6)(E)(v)

⁹ U.S. Dep’t of Homeland Security Office of Inspector General, *supra* note 5.



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in immigration detention facilities,”¹⁰ and a February 2016 report concluding that “failure to provide adequate medical care has continued to result in unnecessary deaths.”¹¹ Lapses in the care provided to detained immigrants, including medical care, and conditions leading to deaths in detention, are of grave concern to the public.

The treatment of detained immigrants in Georgia is particularly severe. Since May 2017, three individuals have died while in ICE custody in the state of Georgia. The conditions at SDC received special attention and censure from the above-referenced DHS OIG report.¹² The inhuman treatment and conditions in these facilities have also been the focus of a publicly-disseminated report by Project South that was released in May 2017.¹³

Disclosure of the information surrounding the treatment and death of Mr. Castro, as well as the medical standards, protocols, and overall conditions at SDC will help identify the problems at SDC that have led to deaths of individuals in ICE custody. Release of the records requested will shed much-needed light on troubling practices that place detained immigrants in physical danger.

By knowing and understanding the problems, ICE and other government officials can prevent any more deaths from occurring in ICE custody and ensure the physical safety of detainees. Without this information, the lives of detained immigrants in ICE custody in the state of Georgia are imminently at risk.

B. The Information Is Requested by an Organization Primarily Engaged in Disseminating Information and the Records Sought Are Urgently Needed to Inform the Public about Actual or Alleged Federal Government Activity

i. Project South is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

Project South is “primarily engaged in dissemination of information” pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II).¹⁴ Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public

¹⁰ Human Rights Watch, CIVIC, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention*, at 1 (May 2017), https://www.hrw.org/sites/default/files/report_pdf/usimmigration0517_web_0.pdf.

¹¹ ACLU, DWN, NIJC, *Fatal Neglect: How ICE Ignores Deaths in Detention*, at 2 (Feb. 2016), <https://www.detentionwatchnetwork.org/sites/default/files/reports/Fatal%20Neglect%20ACLU-DWN-NIJC.pdf>.

¹² See discussion and excerpts, *supra* note 3.

¹³ PROJECT SOUTH, IMPRISONED JUSTICE: INSIDE TWO GEORGIA IMMIGRANT DETENTION CENTERS (May 2017), https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf (describing conditions of two detention centers in the state of Georgia: The Stewart Detention Center and the Irwin County Detention Center).

¹⁴ See also 6 C.F.R. § 5.5(d)(1)(ii) (expedited processing is warranted where there is “[a]n urgency to inform the public about an actual or alleged federal government activity.”)



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are critical and substantial components of Project South's work and are among its primary activities.¹⁵

Project South is dedicated to the realization and defense of human rights and social justice. Dissemination of information to the public at large, and to impacted communities in particular, to is a critical and substantial component of Project South's mission and work.

- ii. *The records sought are urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).¹⁶ Specifically, the requested records seek to inform the public about ICE's activities in light of the arrest, detention, and subsequent death of a community member who had legally resided in the United States, supported his family, and "had always been really healthy"¹⁷ before entering ICE custody. The requested records also seek to inform the public about ICE's activities in general related to the conditions, protocols, and procedures of detaining immigrants.

C. Expedited processing Is Necessary to Provide Mr. Castro's Wife and Family with Information Regarding the Circumstances of Mr. Castro's Death.

After Mr. Castro's death on January 31, 2018, ICE provided conflicting reports regarding the circumstances surrounding Mr. Castro's death.¹⁸ Mr. Castro's wife and children, as well as Mr. Castro's other family members deserve to know the truth about what caused a healthy 33-year old man who was a father, a son, a brother, and a husband, to die in ICE custody.

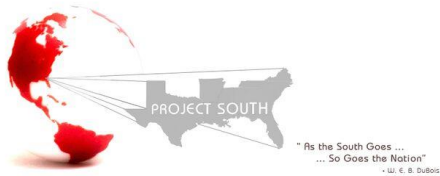
For the above reasons, this request satisfies the requirements for expedited processing under 5 U.S.C. § 552(a)(6)(E)(v)(II).

¹⁵ Courts have found organizations that engage in information dissemination activities similar to Project South are "primarily engaged in disseminating information." *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information"); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

¹⁶ *See also* 6 C.F.R. § 5.5(e)(1)(ii).

¹⁷ Redmon, *supra* note 4.

¹⁸ Press Release, Immigration & Customs Enforcement, ICE Detainee Passes Away, Jan. 31, 2018 (amended), <https://www.ice.gov/news/releases/ice-detainee-passes-away>
Press Release, Immigration & Customs Enforcement, ICE detainee passes away, Jan. 31, 2018 (original) <https://web.archive.org/web/20180201055738/https://www.ice.gov/news/releases/ice-detainee-passes-away>



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Pursuant to 6 C.F.R. § 5.5(d)(3), the undersigned certifies that the information provided above as the basis for requesting expedited processing is true to the best of her knowledge and belief.

If this request is denied in whole or part, Project South asks that all denials are justified by reference to specific exemptions of the FOIA. Project South expects the release all segregable portions of otherwise exempt material. Project South also reserves the right to appeal a decision to withhold any information, or to deny expedited processing. Project South looks forward to a reply to the request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding a decision on the matter of expedited processing, Project South looks forward to a reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

Please contact Azadeh Shahshahani at (404) 622-0602 or azadeh@projectsouth.org, should you wish to discuss this request. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Azadeh Shahshahani".

Azadeh Shahshahani, Esq.
Legal & Advocacy Director